

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE APRIL 14, 2005

**SENATE BILL**

**No. 165**

**Introduced by Senator Speier**

**(~~Coauthor: Senator Alquist~~)**

~~(Coauthors: Assembly Members Jones, Maze, Mullin, Pavley, and  
Ruskin)~~

February 8, 2005

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~~An act to amend Sections 8547.7, 8547.8, 8547.9, 19682, 19683.5, and 19702 of, to add Chapter 9.5 (commencing with Section 19640) to Part 2 of Division 5 of Title 2 of, and to repeal Section 19683 of, the Government Code, relating to the Office of the Special Counsel. An act to amend Section 87164 of the Education Code, and to amend Sections 8547.8, 8547.10, and 19683 of the Government Code, relating to the State Personnel Board.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 165, as amended, Speier. ~~Office of the Special Counsel. State Personnel Board: reprisal or retaliation.~~

(1) Under the California Whistleblower Protection Act, the State Personnel Board is charged with initiating a hearing or investigation of a written complaint of reprisal ~~or~~, retaliation, *threats, coercion, or similar improper acts* against a state employee *or applicant for state employment* who complains of improper governmental activity, as provided. *Under specified provisions of that act, an employee of the University of California is a state employee and the University of California is a state agency.*

~~This bill would repeal the provisions relating to the board initiating a hearing or investigation under the act and instead, establish the Office of the Special Counsel within the State Personnel Board to protect state employees and applicants for state employment from prohibited personnel practices, as specified, to receive and investigate allegations of alleged violations of those provisions, and to initiate disciplinary proceedings. The Special Counsel would be appointed by the Governor, subject to confirmation by the Senate, for a 6-year term and may not be removed from office during that term, except for good cause. The bill would revise the circumstances under which an action for damages is available to an injured party.~~

~~This bill would establish procedures for the Special Counsel with respect to investigating allegations of prohibited personnel practices, reporting the status of investigations, requesting a stay of personnel action by the board, and recommending corrective action. The bill would require the Special Counsel to submit an annual report to the Legislature and to the board on its activities.~~

~~This bill would make conforming changes to existing law.~~

~~(2) Existing law requires the State Auditor to report the nature and details of an alleged improper governmental activity to the head of the employing agency or the appropriate appointing authority.~~

~~This bill would require the State Auditor, in those instances where he or she determines that the employing agency or appropriate appointing agency has not taken sufficient steps to discipline a state employee, to refer the matter to the Office of the Special Counsel and request the Special Counsel to initiate disciplinary proceedings.~~

~~Existing law, known as the Reporting by Community College Employees of Improper Governmental Activities Act, enacts provisions, applicable to community college campuses, that are similar to the California Whistleblower Protection Act, including procedures for the investigation and determination of complaints by the State Personnel Board.~~

~~This bill would authorize a community college employee or an applicant for employment with a public school employer, as defined, to also file a copy of his or her written complaint of an alleged violation of these provisions with the State Personnel Board, together with a sworn statement under penalty of perjury, that the contents are true and would provide that the State Personnel Board has jurisdiction over all other alleged retaliatory acts that occurred more than one year after a written complaint is filed with the board by an~~

employee, as defined, if those acts conform to the continuing violation doctrine. By expanding the definition of the crime of perjury, the bill would impose a state-mandated local program.

The bill would also revise the procedures under these provisions for filing a written complaint with the State Personnel Board and would require the board, among other things, to notify the complaining party within 10 working days of receipt of the written complaint as to whether the board will exercise jurisdiction over the complaint. The bill would also authorize the board to award attorney's fees, after the hearing, if it determines that a violation of these provisions has occurred.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 87164 of the Education Code is  
2     amended to read:  
3     87164. (a) (1) An employee or applicant for employment  
4     with a public school employer who files a written complaint with  
5     his or her supervisor, a community college administrator, or the  
6     public school employer alleging actual or attempted acts of  
7     reprisal, retaliation, threats, coercion, or similar improper acts  
8     prohibited by Section 87163 for having disclosed improper  
9     governmental activities or for refusing to obey an illegal order  
10    may also file a copy of the written complaint with the local law  
11    enforcement agency *or the State Personnel Board*, together with  
12    a sworn statement that the contents of the written complaint are  
13    true, or are believed by the affiant to be true, under penalty of  
14    perjury. The complaint filed with the local law enforcement  
15    agency *or the State Personnel Board* shall be filed within 12  
16    months of the most recent act of reprisal that is the subject of the  
17    complaint.

(2) *The State Personnel Board shall have jurisdiction over all other alleged retaliatory acts that occurred more than one year after the complaint was filed with the board if those acts conform to the continuing violation doctrine applied in Richards v. CH2M Hill, Inc. (2001) 26 Cal.4th 798. Any complaint filed with the board shall conform to the board's filing requirements.*

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee or applicant for employment with a public school employer for having made a protected disclosure is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for a period not to exceed one year. An employee, officer, or administrator who intentionally engages in that conduct shall also be subject to discipline by the public school employer. If no adverse action is instituted by the public school employer, and it is determined that there is reasonable cause to believe that an act of reprisal, retaliation, threats, coercion, or similar acts prohibited by Section 87163 *have occurred*, the local law enforcement agency *or the State Personnel Board* may report the nature and details of the activity to the governing board of the community college district.

~~(c) (1) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 87163 within 10 working days of its submission. The executive officer of the State Personnel Board shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment with a public school employer and to the appropriate supervisors, administrator, or employer. This hearing shall be conducted in accordance with Section 18671.2 of the Government Code, this part, and the rules of practice and procedure of the State Personnel Board. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this paragraph shall not apply. The State Personnel Board shall, within 10 working days of receipt of a written complaint of reprisal or retaliation, as prohibited by Section 87163, notify the complaining party in~~

1 writing as to whether the board will exercise jurisdiction over the  
2 complaint. In those cases when the board determines that it  
3 cannot exercise jurisdiction over the complaint, it shall notify the  
4 complaining party as to the reasons for that determination. In  
5 those cases when the board determines that it can exercise  
6 jurisdiction over the complaint, the case shall be scheduled for  
7 an evidentiary hearing before an administrative law judge. The  
8 hearing shall be scheduled to commence within 60 working days  
9 of the board's acceptance of the complaint, and shall be  
10 conducted in accordance with the board's rules governing  
11 appeals, hearings, investigations, and disciplinary proceedings.  
12 For purposes of this section, the board shall have jurisdiction  
13 over all state employees alleged to have violated Section 8547.3  
14 if the employee is employed by the state, or is on a state  
15 employment list, at the time of the hearing.

16 (2) Notwithstanding Section 18671.2 of the Government  
17 Code, no costs associated with hearings of the State Personnel  
18 Board conducted pursuant to paragraph (1) shall be charged to  
19 the board of governors. Instead, all of the costs associated with  
20 hearings of the State Personnel Board conducted pursuant to  
21 paragraph (1) shall be charged directly to the community college  
22 district that employs the complaining employee, or with whom  
23 the complaining applicant for employment has filed his or her  
24 employment application.

25 ~~(d) If the findings of the executive officer of the State~~  
26 ~~Personnel Board set forth acts of alleged misconduct by the~~  
27 ~~supervisor, community college administrator, or public school~~  
28 ~~employer, the supervisor, administrator, or employer may request~~  
29 ~~a hearing before the State Personnel Board regarding the findings~~  
30 ~~of the executive officer. The request for hearing and any~~  
31 ~~subsequent determination by the board shall be made in~~  
32 ~~accordance with the board's usual rules governing appeals,~~  
33 ~~hearings, investigations, and disciplinary proceedings.~~

34 ~~(e)~~  
35 (d) If, after the hearing, the State Personnel Board determines  
36 that a violation of Section 87163 occurred, ~~or if no hearing is~~  
37 ~~requested and the findings of the executive officer conclude that~~  
38 ~~improper activity has occurred,~~ the board may order any  
39 appropriate relief, including, but not limited to, reinstatement,  
40 back pay, restoration of lost service credit if appropriate,

1 *attorney's fees*, and the expungement of any adverse records of  
2 the employee or applicant for employment with a public school  
3 employer who was the subject of the alleged acts of misconduct  
4 prohibited by Section 87163.

5 ~~(f)~~—

6 (e) Whenever the State Personnel Board determines that a  
7 supervisor, community college administrator, or public school  
8 employer has violated Section 87163, it shall cause an entry to  
9 that effect to be made in the supervisor's, community college  
10 administrator's, or public school employer's official personnel  
11 records.

12 ~~(g)~~—

13 (f) In order for the Governor and the Legislature to determine  
14 the need to continue or modify personnel procedures as they  
15 relate to the investigations of reprisals or retaliation for the  
16 disclosure of information by employees, the State Personnel  
17 Board, by June 30 of each year, shall submit a report to the  
18 Governor and the Legislature regarding complaints filed,  
19 hearings held, and legal actions taken pursuant to this section.

20 ~~(h)~~—

21 (g) In addition to all other penalties provided by law, a person  
22 who intentionally engages in acts of reprisal, retaliation, threats,  
23 coercion, or similar acts against an employee or applicant for  
24 employment with a public school employer for having made a  
25 protected disclosure shall be liable in an action for damages  
26 brought against him or her by the injured party. Punitive damages  
27 may be awarded by the court—~~where~~ *when* the acts of the  
28 offending party are proven to be malicious. ~~Where~~ *When* liability  
29 has been established, the injured party shall also be entitled to  
30 reasonable attorney's fees as provided by law. However, an  
31 action for damages shall not be available to the injured party  
32 unless the injured party has first filed a complaint with the local  
33 law enforcement agency. Nothing in this subdivision requires an  
34 injured party to file a complaint with the State Personnel Board  
35 prior to seeking relief for damages in a court of law.

36 ~~(i)~~—

37 (h) This section is not intended to prevent a public school  
38 employer, school administrator, or supervisor from taking, failing  
39 to take, directing others to take, recommending, or approving a  
40 personnel action with respect to an employee or applicant for

1 employment with a public school employer if the public school  
2 employer, school administrator, or supervisor reasonably  
3 believes an action or inaction is justified on the basis of evidence  
4 separate and apart from the fact that the person has made a  
5 protected disclosure, as defined in subdivision (e) of Section  
6 87162.

7 ~~(j)~~

8 (i) In any civil action or administrative proceeding, once it has  
9 been demonstrated by a preponderance of evidence that an  
10 activity protected by this article was a contributing factor in the  
11 alleged retaliation against a former, current, or prospective  
12 employee, the burden of proof shall be on the supervisor, school  
13 administrator, or public school employer to demonstrate by clear  
14 and convincing evidence that the alleged action would have  
15 occurred for legitimate, independent reasons even if the  
16 employee had not engaged in protected disclosures or refused an  
17 illegal order. If the supervisor, school administrator, or public  
18 school employer fails to meet this burden of proof in an adverse  
19 action against the employee in any administrative review,  
20 challenge, or adjudication in which retaliation has been  
21 demonstrated to be a contributing factor, the employee shall have  
22 a complete affirmative defense in the adverse action.

23 ~~(k)~~

24 (j) Nothing in this article shall be deemed to diminish the  
25 rights, privileges, or remedies of an employee under any other  
26 federal or state law or under an employment contract or  
27 collective bargaining agreement.

28 ~~(l)~~

29 (k) If the provisions of this section are in conflict with the  
30 provisions of a memorandum of understanding reached pursuant  
31 to Chapter 10.7 (commencing with Section 3540) of Division 4  
32 of Title 1 of the Government Code, the memorandum of  
33 understanding shall be controlling without further legislative  
34 action.

35 *SEC. 2. Section 8547.8 of the Government Code is amended*  
36 *to read:*

37 8547.8. (a) (1) A state employee or applicant for state  
38 employment who files a written complaint with his or her  
39 supervisor, manager, or the appointing power alleging actual or  
40 attempted acts of reprisal, retaliation, threats, coercion, or similar

1 improper acts prohibited by Section 8547.3, may also file a copy  
2 of the written complaint with the State Personnel Board, together  
3 with a sworn statement that the contents of the written complaint  
4 are true, or are believed by the affiant to be true, under penalty of  
5 perjury. The complaint filed with the board, shall be filed within  
6 12 months of the most recent act of reprisal complained about.

7 (2) *The State Personnel Board shall have jurisdiction over all*  
8 *other alleged retaliatory acts that occurred more than one year*  
9 *after the complaint was filed with the board if those acts conform*  
10 *to the continuing violation doctrine applied in Richards v. CH2M*  
11 *Hill, Inc. (2001) 26 Cal.4th 798. All complaints filed with the*  
12 *board shall conform to the board's filing requirements.*

13 (b) Any person who intentionally engages in acts of reprisal,  
14 retaliation, threats, coercion, or similar acts against a state  
15 employee or applicant for state employment for having made a  
16 protected disclosure, is subject to a fine not to exceed ten  
17 thousand dollars (\$10,000) and imprisonment in the county jail  
18 for a period not to exceed one year. Pursuant to Section 19683,  
19 any state civil service employee who intentionally engages in that  
20 conduct shall be disciplined by adverse action as provided by  
21 Section 19572.

22 (c) In addition to all other penalties provided by law, any  
23 person who intentionally engages in acts of reprisal, retaliation,  
24 threats, coercion, or similar acts against a state employee or  
25 applicant for state employment for having made a protected  
26 disclosure shall be liable in an action for damages brought  
27 against him or her by the injured party. Punitive damages may be  
28 awarded by the court ~~where~~ *when* the acts of the offending party  
29 are proven to be malicious. ~~Where~~ *When* liability has been  
30 established, the injured party shall also be entitled to reasonable  
31 attorney's fees as provided by law. However, any action for  
32 damages shall not be available to the injured party unless the  
33 injured party has first filed a complaint with the State Personnel  
34 Board pursuant to subdivision (a), and the board has issued, or  
35 failed to issue, ~~findings~~ *a decision on the merits of the complaint*  
36 pursuant to Section 19683.

37 (d) This section is not intended to prevent an appointing  
38 power, manager, or supervisor from taking, directing others to  
39 take, recommending, or approving any personnel action or from  
40 taking or failing to take a personnel action with respect to any



1 state employee or applicant for state employment if the  
2 appointing power, manager, or supervisor reasonably believes  
3 any action or inaction is justified on the basis of evidence  
4 separate and apart from the fact that the person has made a  
5 protected disclosure, as defined in subdivision (b) of Section  
6 8547.2.

7 (e) In any civil action or administrative proceeding, once it has  
8 been demonstrated by a preponderance of evidence that an  
9 activity protected by this article was a contributing factor in the  
10 alleged retaliation against a former, current, or prospective  
11 employee, the burden of proof shall be on the supervisor,  
12 manager, or appointing power to demonstrate by clear and  
13 convincing evidence that the alleged action would have occurred  
14 for legitimate, independent reasons even if the employee had not  
15 engaged in protected disclosures or refused an illegal order. If the  
16 supervisor, manager, or appointing power fails to meet this  
17 burden of proof in an adverse action against the employee in any  
18 administrative review, challenge, or adjudication in which  
19 retaliation has been demonstrated to be a contributing factor, the  
20 employee shall have a complete affirmative defense in the  
21 adverse action.

22 (f) Nothing in this article shall be deemed to diminish the  
23 rights, privileges, or remedies of any employee under any other  
24 federal or state law or under any employment contract or  
25 collective bargaining agreement.

26 *SEC. 3. Section 8547.10 of the Government Code is amended*  
27 *to read:*

28 8547.10. (a) A University of California employee, including  
29 an officer or faculty member, or applicant for employment may  
30 file a written complaint with his or her supervisor or manager, or  
31 with any other university officer designated for that purpose by  
32 the regents, alleging actual or attempted acts of reprisal,  
33 retaliation, threats, coercion, or similar improper acts for having  
34 made a protected disclosure, together with a sworn statement that  
35 the contents of the written complaint are true, or are believed by  
36 the affiant to be true, under penalty of perjury. The complaint  
37 shall be filed within 12 months of the most recent act of reprisal  
38 complained about.

39 (b) Any person who intentionally engages in acts of reprisal,  
40 retaliation, threats, coercion, or similar acts against a University

1 of California employee, including an officer or faculty member,  
2 or applicant for employment for having made a protected  
3 disclosure, is subject to a fine not to exceed ten thousand dollars  
4 (\$10,000) and imprisonment in the county jail for up to a period  
5 of one year. Any university employee, including an officer or  
6 faculty member, who intentionally engages in that conduct shall  
7 also be subject to discipline by the university.

8 (c) In addition to all other penalties provided by law, any  
9 person who intentionally engages in acts of reprisal, retaliation,  
10 threats, coercion, or similar acts against a university employee,  
11 including an officer or faculty member, or applicant for  
12 employment for having made a protected disclosure shall be  
13 liable in an action for damages brought against him or her by the  
14 injured party. Punitive damages may be awarded by the court  
15 ~~where~~ *when* the acts of the offending party are proven to be  
16 malicious. ~~Where~~ *When* liability has been established, the injured  
17 party shall also be entitled to reasonable attorney's fees as  
18 provided by law. However, any action for damages shall not be  
19 available to the injured party unless the injured party has first  
20 filed a complaint with the university officer identified pursuant to  
21 subdivision (a), and the university has ~~failed to reach~~ *issued, or*  
22 *failed to issue*, a decision *on the merits* regarding that complaint  
23 within the time limits established for that purpose by the regents.

24 (d) This section is not intended to prevent a manager or  
25 supervisor from taking, directing others to take, recommending,  
26 or approving any personnel action or from taking or failing to  
27 take a personnel action with respect to any university employee,  
28 including an officer or faculty member, or applicant for  
29 employment if the manager or supervisor reasonably believes  
30 any action or inaction is justified on the basis of evidence  
31 separate and apart from the fact that the person has made a  
32 protected disclosure.

33 (e) In any civil action or administrative proceeding, once it has  
34 been demonstrated by a preponderance of the evidence that an  
35 activity protected by this article was a contributing factor in the  
36 alleged retaliation against a former, current, or prospective  
37 employee, the burden of proof shall be on the supervisor,  
38 manager, or appointing power to demonstrate by clear and  
39 convincing evidence that the alleged action would have occurred  
40 for legitimate, independent reasons even if the employee had not

engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

*SEC. 4. Section 19683 of the Government Code is amended to read:*

19683. (a) The State Personnel Board shall ~~initiate a hearing or investigation of a~~ *within 10 working days of receipt of a* written complaint of reprisal or retaliation as prohibited by Section 8547.3 ~~within 10 working days of its submission, notify the complaining party in writing as to whether the board will exercise jurisdiction over the complaint. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. In those cases when the board determines that it cannot exercise jurisdiction over the complaint, it shall notify the complaining party as to the reasons for that determination. In those cases when the board determines that it can exercise jurisdiction over the complaint, the case shall be scheduled for an evidentiary hearing before an administrative law judge. The hearing shall be scheduled to commence within 60 working days of the board's acceptance of the complaint, and shall be conducted in accordance with the board's rules governing appeals, hearings, investigations, and disciplinary proceedings. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the executive officer may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not~~ apply.

(b) ~~If the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities, the supervisor, manager, employee, or appointing power may request a hearing before the State Personnel Board regarding the findings of the executive officer. The request for hearing and any subsequent determination by the board shall be made in accordance with the board's normal rules governing appeals, hearings, investigations, and disciplinary proceedings. For purposes of this section, the board shall have jurisdiction over all state employees alleged to have violated Section 8547.3 if the employee is employed by the state at the time of the hearing.~~

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 occurred, ~~or if no hearing is requested and the findings of the executive officer conclude that improper activity has occurred,~~ the board may order any appropriate relief, including, but not limited to, reinstatement, backpay, restoration of lost service credit, if appropriate, compensatory damages, *attorney's fees*, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by Section 8547.3.

(d) *Whenever a complaining party requests that disciplinary action be imposed on a manager, supervisor, or employee that he or she knows, or reasonably should know, has engaged in or participated in any act prohibited by Section 8547.3, the complaining party shall, in accordance with Section 19583.5, make the request in his or her complaint filed with the board pursuant to subdivision (a) of Section 8547.8.* Whenever the board determines that a manager, supervisor, or employee, who is named a party to the retaliation complaint, has violated Section 8547.3 and that violation constitutes legal cause for discipline under one or more subdivisions of Section 19572, it shall impose a just and proper penalty and cause an entry to that effect to be made in the manager's, supervisor's, or employee's official personnel records.

(e) ~~Whenever the board determines that a manager, supervisor, or employee, who is not named a party to the retaliation complaint, may have engaged in or participated in any act prohibited by Section 8547.3, In those cases when, prior to filing~~

1 *his or her complaint with the board pursuant to subdivision (a) of*  
2 *Section 8547.8, the complaining party neither knew, nor*  
3 *reasonably should have known, the identity of a manager,*  
4 *supervisor, or employee who, after the hearing, is found to have*  
5 *engaged in or participated in any act prohibited by Section*  
6 *8547.3, the board shall notify the manager's, supervisor's, or*  
7 *employee's appointing power of that fact in writing. Within 60*  
8 *days after receiving the notification, the appointing power shall*  
9 *either serve a notice of adverse action on the manager,*  
10 *supervisor, or employee, or set forth in writing its reasons for not*  
11 *taking adverse action against the manager, supervisor, or*  
12 *employee. The appointing power shall file a copy of the notice of*  
13 *adverse action with the board in accordance with Section 19574.*  
14 *If the appointing power declines to take adverse action against*  
15 *the manager, supervisor, or employee, it shall submit its written*  
16 *reasons for not doing so to the board, ~~which~~. The board may*  
17 *~~take~~ thereafter permit the complaining party to initiate adverse*  
18 *action ~~proceedings~~ against the manager, supervisor, or employee*  
19 *as provided in Section 19583.5, or the executive officer may, in*  
20 *his or her discretion, initiate disciplinary proceedings against the*  
21 *manager, supervisor, or employee as provided in Section*  
22 *19583.5. A manager, supervisor, or employee who is served with*  
23 *a notice of adverse action pursuant to this section may file an*  
24 *appeal with the board in accordance with Section 19575.*

25 (f) In order for the Governor and the Legislature to determine  
26 the need to continue or modify state personnel procedures as they  
27 relate to the investigations of reprisals or retaliation for the  
28 disclosure of information by public employees, the State  
29 Personnel Board, by June 30 of each year, shall submit a report  
30 to the Governor and the Legislature regarding complaints filed,  
31 hearings held, and legal actions taken pursuant to this section.

32 *SEC. 5. No reimbursement is required by this act pursuant to*  
33 *Section 6 of Article XIII B of the California Constitution because*  
34 *the only costs that may be incurred by a local agency or school*  
35 *district will be incurred because this act creates a new crime or*  
36 *infraction, eliminates a crime or infraction, or changes the*  
37 *penalty for a crime or infraction, within the meaning of Section*  
38 *17556 of the Government Code, or changes the definition of a*  
39 *crime within the meaning of Section 6 of Article XIII B of the*  
40 *California Constitution.*

1     ~~SECTION 1. Section 8547.7 of the Government Code is~~  
2     ~~amended to read:~~

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**All matter omitted in this version of the bill  
appears in the bill as amended in Senate,  
April 27, 2005. (JR11)**